Supreme Court, U.S.
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No. 88-540

IN THE

Supreme Court of the United States

October Term, 1988

MARK VANNELLI,

Petitioner,

vs.

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA AND MINNESOTA COURT OF APPEALS

[REPLY BRIEF]

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September, 1988

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ARGUMENT

This Reply Brief is written because of the most significantly wrong representation (among others) by the NCAA in footnote 7 in its Brief In Opposition to the Petition wherein the NCAA attempts to distinguish the holding by the Fifth Circuit in the **McCormack** case, 585 F.2d 1338 (1988). Significantly, the NCAA failed to address the issue of 'free agency' which is at the heart of Petitioner's antitrust claim. Petitioner's Brief noted that, in the **McCormack** case, the S.M.U. football players had been declared 'free agents' to freely bargain with other schools for their playing services when the 'death penalty' was imposed by the NCAA on the S.M.U. football program. There was no restraint on their bargaining power. In contrast, Petitioner was subject to NCAA transfer restriction rules and thus restrained in his bargaining power with other schools for his playing services. The Fifth Circuit noted, **id.** at 1343, that "the plaintiffs have failed to allege any **facts** contrary" (emphasis added herein) to the reasonability of the NCAA's eligibility rules. The NCAA, in footnote 7, noted that this is "the identical theory as petitioner asserts". Thus, the NCAA incompletely represents that case to this Court by failing to note that, while the "theory" may be identical, the **facts** are readily distinguishable and would lead to a finding of unreasonableness. In **McCormack,** the football players were 'free agents' whereas

the Petitioner here was not a 'free agent'. Petitioner's theory is upheld by the Fifth Circuit.

The NCAA has continued its efforts to further obfuscate the **facts** before this Court and continue to financially burden enforcement of the legitimate rights and concerns of student-athletes. The head of the NCAA in early 1988 publicly criticized the NCAA for its indifference to the rights and concerns of the student-athletes. It is hoped this Court will grant the Petition.

Dated: November 3, 1988.

Respectfully submitted,

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